

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-863

March 12, 1999

CENTRAL MAINE POWER COMPANY
Request to Construct Transmission Line
of 100 or More Kilovolts to Connect with
Rumford Power Associates Generating
Facility

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We issue a certificate of public convenience and necessity for Central Maine Power Company to build a new transmission line to connect the Rumford Power Associates generating facility to CMP's transmission system. With the utility deregulation of generation, we do not review the need for the generating facility and consider only the need of the proposed transmission line to best serve the proposed generating facility. Eminent domain questions are left for future proceedings.

II. PROCEDURAL HISTORY

Rumford Power Associates (RPA) is building a new 265 MW gas-fired combined cycle generation plant in the Rumford Industrial Park. The RPA facility will be operated as a merchant generating facility, and the power it produces will be sold at wholesale. Central Maine Power Company (CMP) requests a Certificate of Public Convenience and Necessity to construct a new 115 kV transmission line to connect the RPA facility to CMP's transmission system.

After a Notice of Proceeding was issued, one person, Bart Hague, petitioned to intervene. Mr. Hague owns land that adjoins the transmission line corridor in which CMP proposes to build the new transmission line. Mr. Hague's petition was granted at a technical conference on December 15, 1998. At the conference, CMP employees and Mr. Hague answered questions posed by the Advisory Staff.

After the Conference, Mr. Hague was given the opportunity to provide written comments on any issues he wanted to address. The Examiner stated that, based upon CMP's filing, data responses and answers at the technical conference, the Advisors would not require further factual inquiry. Accordingly, the Examiner did not plan on scheduling any further evidentiary hearing at that time. Mr. Hague was directed to indicate in his comments whether he desired any further hearing or factual inquiry.

III. FINDINGS OF FACT

In his comments, Mr. Hague did not ask for a hearing or any other opportunity to develop facts relevant to this certificate case. Accordingly, the record in this case consists of CMP's petition, responses to data requests and the transcript from the technical conference. Based upon this record, we find the following facts.

A. The New 115 KV Line.

CMP performed a system impact study (SIS) to analyze the impact of the proposed interconnection on CMP's transmission system. In the SIS, CMP determined the effect of the RPA facility on the existing power delivery system and concluded that the proposed RPA plant will cause numerous transmission line overloads throughout CMP's western transmission system. These overloads will occur with all lines in service and, to a greater extent, on the line-out condition. To prevent these overload conditions, CMP proposes construction of a new 115 kV transmission line (Section 217) to help carry energy within and from the western transmission system. CMP also proposes a new 115 kV substation (Rumford Substation) to which the RPA facility will connect and which will also serve as a terminal for the proposed Section 217 and two other existing 115 kV lines. Finally, the connection of the RPA facility to CMP's system will also require modifications to the existing Kimball Road Substation in Harrison, reconductoring of Section 201 in the Gulf Island and Crowley's substations in Lewiston, and the construction of a 115 kV substation in North Waterford.

Section 217 will be a 115 kV transmission line built from the new Rumford Industrial Park Substation in Rumford, Maine to the existing Kimball Road Substation in Harrison, Maine. The proposed transmission line will run, for the most part, on the west side of and parallel to the existing transmission line corridor for existing Sections 210 and 211. The 34 miles of new section 217 will be constructed on H-frame structures, except in an area along the Crooked River where local permitting required the line to go to single pole construction and in the Cushman Hill area of Woodstock pursuant to an agreement with landowners. The H-frame structures will be spaced at intervals of 500 to 1,000 feet (depending on terrain) which will allow spanning of sensitive areas while maintaining a relatively low silhouette.

The safety features to be used in connection with Section 217 are consistent with NEPOOL and Northeast Power Coordinating Council (NPCC) planning criteria. These criteria state that the power system must be able to operate safely and within certain limits during any single contingency outage. For the contingency where one of the two existing western Maine 115 kV transmission lines is removed from service due to a fault (short circuit), the remaining transmission line becomes seriously overloaded. This overloading can damage power system equipment, threaten the stability of the western Maine Power System, and is a public safety hazard. NPCC planning criteria state that double-circuited towers must be considered as a single contingency. Single events on double-circuited towers can cause both lines to trip. If a

third 115 kV line were built on a double-circuit tower with one of the existing lines, a trip of those lines would create the same overload and condition described above. Accordingly, placing the proposed Section 217 on separate towers complies with NEPOOL criteria and is designed to maintain system stability and reduce the probability of customer power outages.

The center line of the proposed Section 217 corridor will be nominally located on the northerly boundary of CMP's existing corridor for Section 210 and 211, which CMP owns largely in fee. The additional width needed for Section 217 encompasses approximately 102 parcels of which 68 are secured by written options to purchase. CMP states that negotiations are in progress on the remaining parcels. CMP also states that sufficient rights have been secured to construct Section 217 in all locations where the proposed transmission line will be within 300 feet of an inhabited dwelling.¹

RPA is contractually committed to pay the cost of the transmission line and other improvements. To the extent the facilities become Pool Transmission Facilities (PTFs), CMP will refund that portion of the cost of the PTFs that are allocated to and become reflected in the pool transmission charges.²

B. Alternatives.

CMP considered two alternatives to the route for which CMP seeks approval, known as the "western route". An "eastern route" would run approximately 45 miles from Rumford to Lewiston via Livermore Falls. A "central route" would run from Rumford to Turner, a distance of 36 miles. Like the western route, the eastern route would run adjacent to an existing transmission line corridor for its entire length, while the central route would include a large component of entirely new transmission line corridor. The environmental impacts of the central route were far greater than those of either the eastern or western route. Because the central route would affect areas previously unaffected by rights-of-way, the central route was dropped from further consideration, and CMP's attention was focused on the eastern and western alternatives.

For electric reliability and safety purposes, there is no significant difference between the western and eastern routes. CMP decided that the western

¹ Electric utilities do not acquire the right of eminent domain for lands or easements located within 300 feet of an inhabited dwelling.

² Section 11 of the NEPOOL open access transmission tariff sets forth the procedure and the formula for the allocation of cost associated with upgrades to Pool Transmission Facilities related to providing requested service to a new generator. By Order dated October 28, 1998, FERC has suggested that this provision may be modified in conjunction with the implementation of a NEPOOL congestion management system. See *Re: New England Power Pool*, 85 FERC § 61,141 (1998).

route was superior for other reasons, such as cost and environmental factors. Both routes are rural or remote in nature. The western route is only 34 miles compared to the 45-mile eastern route. The number of stream, wetland and road crossings are all significantly higher for the eastern route. The miles of potential archeological, aesthetic and sensitive habitat impacts are all greater for the eastern route than the western route. Accordingly, CMP concluded that the western route was superior, and on April 21, 1998, CMP filed a Permit Application under the Site Location of Development Law, 38 M.R.S.A. §§ 481 - 490, with the Maine Department of Environmental Protection (DEP) for a permit along the western route. On December 4, 1998, the DEP approved the application to construct the transmission line along the western route. In its approval order, DEP implicitly agreed with CMP's preference for the western route and mentioned that DEP (and the Town of Waterford) recommended modifications to CMP's construction plans near the Crooked River that CMP had accepted.

IV. DECISION

A. Applicable Standard.

Under Section 3132, the Commission is required to "make specific findings with regard to the need for the proposed facility." 35-A M.R.S.A. § 3132(6). Moreover, "[i]f the Commission finds that a need exists, it shall issue a certificate of public convenience and necessity for the facilities." *Id.*

Traditionally, the Commission establishes a public need by determining that ratepayers will benefit by the proposed transmission line. Benefits are determined based upon the electrical need for the line, taking into account economics, safety and reliability. *Bangor Hydro-Electric Company (Petition for Certificate of Public Convenience and Necessity for a U5KV Transmission Line from Orrington to Ellsworth)*, Docket No. 97-834 (April 22, 1998). The alternative chosen must be reasonable compared to the other alternatives. Cost is an important consideration, but the alternative chosen need not be the least costly, because aesthetic, environmental or other factors may justify a reasonable cost increase. See *Central Maine Power Company (Petition for Certificate of Public Convenience and Necessity to create a transmission line carrying 100 Kilovolts or more within the State of Maine)*, Docket No. U.3339 (August 11, 1987) (certificate denied until CMP studied Town's preferred alternative which could be accommodated with small variation in cost).

B. Application of the Standard.

By the Electric Restructuring Act, 35-A M.R.S.A. §§ 3201-3217, generation of electricity will no longer be utility service. In anticipation of retail access on March 1, 2000, the Legislature has classified facilities such as the RPA facility as "excluded electric plant," which removes them from the definition of electric utility even before March 1, 2000. See 35-A M.R.S.A. § 102(6-A) *enacted by* P.L. 1997, ch. 710,

§ 2.

CMP presents the first request for a certificate to build transmission facilities that are required only to connect an unregulated, non-utility power producer to the transmission network.³ We are no longer in a position to consider power supply options on behalf of ratepayers to determine the public need or ratepayer benefit. Rather, the Legislature has determined that ratepayers will benefit by subjecting electric power supply to competition and removing generators from utility regulation. See 35-A M.R.S.A. §§ 3201-3217. The Commission therefore must accept the “public need” for the RPA plant. For a competitive generation market to develop, the market and not the Commission must determine whether any particular generating facility should be built. We agree with CMP that a new transmission line (and other transmission upgrades) are necessary, assuming the RPA generating plant is built. Accordingly, we do not consider any alternatives to the construction of a new transmission line, such as a different location for the generating facility or demand-side programs that might reduce transmission line loading.

Nor is there any reason to consider any alternative location for the transmission line. Although neither the eastern, central nor western route enjoys a discernible electric reliability or safety advantage, significant environmental advantages exist for the western route, as determined by the DEP. The western route also costs the least.

In any event, costs are not a significant factor in deciding the public need of the section 217 transmission line. RPA is initially responsible for all upgrades and transmission line costs including PTF facilities. To the extent that any of those costs are later rolled into the NEPOOL tariff, RPA will be refunded those costs. CMP’s ratepayers will ultimately be allocated a portion of NEPOOL tariff costs. However, FERC decides allocation of transmission upgrade costs pursuant to NEPOOL tariffs. Thus, CMP has contracted with RPA so that RPA pays for the transmission line unless FERC allocates some costs to NEPOOL transmission ratepayers. We will not, deny this certificate because FERC may decide that Maine ratepayers as NEPOOL transmission tariff ratepayers, must pay for a share of the transmission upgrade costs.

The deregulation of generation has created uncertainty in the area of transmission pricing. The current NEPOOL tariffs approved by FERC require RPA to pay all costs of the transmission line and upgrades. As described in footnote 2, FERC has indicated in an order on October 28, 1998 that some change in the current tariff is likely warranted in conjunction with the implementation of a NEPOOL congestion management system. *Re: New England Power Pool*, 85 F.E.R.C. ¶61,141(1998).

³ We note that CMP experts conclude that the location of a new generator in Rumford will provide certain electric reliability benefits to CMP’s customers, that always occur when generation is located closer to load. The incidental benefits are not sufficient, however, to justify the construction of the new transmission line.

Given the cost of the transmission line and the tariff changes proposed by NEPOOL, we do not expect any significant cost increase to Maine ratepayers for the section 217 line. Therefore, we do not find any economic consideration that prevents us from finding a public need for CMP's construction of the section 217 transmission line. We leave for another case to consider whether the imposition of significant costs on Maine's T&D customers may warrant the rejection of the public need for a transmission line built solely to connect a generator to the transmission system.

C. Issues Raised by Intervenor.

In his comments, Intervenor Hague raises certain issues, only some of which are relevant to this proceeding. Mr. Hague questions the manner in which the line should be constructed, presumably with the intent to eliminate or minimize the additional land that CMP requires to widen the corridor. For instance, if the third line could be located on existing poles, CMP might not have to widen the existing corridor. Based upon the evidence provided by CMP, there are electric reliability reasons for the third line to be located on separate poles and thus the wider corridor is necessary. CMP reasonably decided to use an additional set of poles for the third line.

Mr. Hague also raises concerns about the spacing for the poles and lines. We have reviewed the information provided by CMP. We find that CMP's construction plans conform to our requirements for safety and reliability. CMP's construction must conform to the National Electrical Safety Code as required by 35-A M.R.S.A. § 2305-A and the Northeast Power Coordinating Council concerning single contingency criteria.

Mr. Hague raises concerns about the location of the electric transmission line within the same corridor of the PNGTS Pipeline. Those concerns have already been addressed by the FERC in the PNGTS pipeline certificate case. See *Portland Natural Gas Transmission System*, Docket CP96-249-000 (F.E.R.C. 1997).

Mr. Hague raises concerns about the societal opportunity costs caused by foregoing recreation space, forest production or other economic uses of land and water resources. These matters are within the Department of Environmental Protection's jurisdiction and already have been addressed by DEP. Mr. Hague also argues that other land use issues are delegated to multiple, unsophisticated local boards that are ill-equipped to address regional or statewide land use issues. Mr. Hague suggests that a state agency, such as a siting board or council, is warranted.⁴ While Mr. Hague may present valid arguments as to the benefits of such a statewide review, his arguments must be made to the Legislature and not the Commission.⁵

⁴ The Legislature's Utilities and Energy Committee is considering legislation that would create a study to investigate alternatives such as a transmission siting council. See L.D. 471 (119th Legislature 1999).

⁵ Mr. Hague's call for an evaluation by an independent consultant in order to assess the

Mr. Hague raises some issues concerning utility acts or practices that may be within the jurisdiction of the Commission, such as managing or maintaining the vegetation in the corridor and coordination by all the users of the corridors so as to minimize the interference suffered by the adjoining land owners. While Mr. Hague may raise valid issues, they are not relevant in deciding whether a certificate should be issued to build the transmission line. The question of whether corridor management issues are worthy of investigation will have to be decided in the future and not in this proceeding.

Mr. Hague also raises issues concerning whether CMP should compensate land owners for loss of economic value to the parcels that adjoin the land taken by CMP. Again Mr. Hague's issues are premature. Issues concerning the value of property taken by eminent domain must be resolved by county commissioners, with appeal rights to Superior Court. See 35-A M.R.S.A. § 3136 (referring to 35-A M.R.S.A. chapter 65 procedures for property taken for public use by water utilities). Accordingly, value issues will not be decided by the Commission.

Although CMP may acquire property by eminent domain only with Commission approval, after issuance of a certificate in this case, it is not clear what issues would be before the Commission in an eminent domain request for land needed to construct the section 217 line. Environmental factors are preempted by the DEP permit. 35-A M.R.S.A. § 3136(4). Mr. Hague also appears to be concerned whether eminent domain empowers CMP only to obtain easements rather than ownership in fee. We will wait until we are presented with an actual eminent domain approval request before we decide whether our jurisdiction to approve the "location to be taken by eminent domain" includes the easement vs. fee simple issue. We would note that the Law Court has stated the general principle that statutes authorizing eminent domain "must be construed strictly against the donee of the right." *In re Bangor Hydro-Electric Company*, 314 A.2d 800, 806 (Me. 1974).

We conclude that none of the issues raised by Mr. Hague justifies further inquiry or investigation in this certificate proceeding. CMP has demonstrated the need for a 115KV transmission line and that its proposed western route construction of that line is the most reasonable alternative. Accordingly, we issue a certificate of public

complex engineering, economic and environmental questions, may also be satisfied by the existence of a siting council. It is sufficient to note that in this case, the Commission has adequate expertise to decide the need, reliability and safety matters within the Commission's jurisdiction.

convenience and necessity for Central Maine Power Company to construct the proposed section 217 transmission line.

Dated at Augusta, Maine this 12th day of March, 1999.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond